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OFFICE OF PETITIONS

In re Application of : Paper No. 11
Ridgeway, et al.
Application No. 09/383,908 :
Filed: 21 August, 2001 : DECISION GRANTING PETITIONS
Attorney Docket No. 474.003 : UNDER 37 C.F.R. §§ 1.322 AND 1.53(e)

In re Application of : Paper No. 4
Ridgeway, et al.
Application No. 10/042,687 :
Filed: 21 August, 2001 :
Attorney Docket No. 474.003/DIV1 : The petition under 37 C.F.R. § 1.322 is GRANTED; the petition under 37 C.F.R. § 1.53(e) is DISMISSED as moot.

This is a decision on the petition filed on 22 February, 2002, under 37 C.F.R. § 1.182, requesting that the Continued Prosecution Application (CPA) filed on 21 August, 2001, and based on prior application No. 09/383,908 (issued as U.S. Patent No. 6,341,745 on 29 January, 2002 (the '745 patent)) be treated as a continuation application under 37 C.F.R. § 1.53(b), rather than 37 C.F.R. § 1.53(d), and be accorded a filing date of 21 August, 2001.

The petition is treated appropriately under 37 C.F.R. § 1.322 (in Application No. 09/383,908) and § 1.53(e) (in Application No. 10/042,687).

The petitions under 37 C.F.R. § 1.322 (in Application No. 09/383,908) and § 1.53(e) (in Application No. 10/042,687), respectively, are **GRANTED**; the petition under 37 C.F.R. § 1.182 is **DISMISSED as moot**.

A review of the file of prior Application No. 09/383,908 (the '908 application) reveals that:

- a Notice of Allowance and Issue Fee Due was mailed on 21 May, 2001 (the first Notice of Allowance), and Petitioner timely paid the Issue Fee on 20 August, 2001;
- a request for a continued prosecution application (CPA) under 37 C.F.R. § 1.53(d) based on prior Application No. 09/383,908 was filed--improperly under the rules because it occurred after payment of the Issue Fee--on 21 August, 2001 (the 21 August CPA);

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- in the interim, on 6 December, 2001, the Office issued a (second) Notice of Allowance and Issue Fee Due in the '908 application (the second Notice of Allowance), this time as to the claims of the 21 August CPA;
- Petitioner did not pay the Issue Fee in response to this second Notice of Allowance.
- the '908 application issued as U.S. Patent No. 6,341,745 (the '745 patent) on 29 January, 2002 (apparently as a result of applicant's payment of the issue fee on 20 August, 2001);
- however, the Office improperly and erroneously issued the '745 patent containing the claims of the 21 August CPA, rather than the previously allowed claims of the '908 application.

RESULT AS TO APPLICATION NO. 09/383,908/PATENT NO. 6,341,745

The petition as considered under 37 C.F.R. §1.322 is **GRANTED**. All fees are waived.

The file of Application No. 09/383,908/Patent No. 6,341,745 is being forwarded to the Office of the Certificate of Corrections Branch:

- to be processed, and
- for a Certificate of Correction--specifying and containing the claims as allowed on 21 May, 2001(a copy of which is enclosed herewith), for and in Application No. 09/383,908, which issued on 29 January, 2002, as Patent No. 6,341,745--to issue in due course.

RESULT AS TO APPLICATION NO. 10/042,687

Since the prior application (the '908 application) has issued as a patent, the original application papers present in the file of Application No. 09/383,908 are no longer available for processing under 37 C.F.R. §1.53(d).

In view of the decision and improper CPA request, the CPA request and other papers filed on 21 August, 2001, have been removed from the file of application No. 09/383,908 and have been assigned application No. 10/042,687 for identification purposes. The present petition has also been placed in the file of Application No. 10/042,687. All further correspondence concerning the application deposited on 21 August, 2001, should be directed to Application No. 10/042,687, not Application No. 09/383,908.

The present petition requests that the CPA request be treated as an application under 37 C.F.R. §1.53(b).

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A petition to accept and treat an improper application filed under 37 C.F.R. §1.53(d) as a proper application under 37 C.F.R. §1.53(b) must include: (1) the \$130.00 petition fee, and (2) a copy of the complete nonprovisional application, as filed, designated as the prior nonprovisional application in the application papers filed under 37 C.F.R. §1.53(d).

The petition is accompanied by a specification, drawings, and a copy of a signed declaration. The submission of these application papers with the petition is understood as a representation by counsel that the specification and drawings do not contain any subject matter that would have been new matter in the prior application.

The petition under 37 C.F.R. §1.53(e) for §1.53(b)-treatment of the (improper) CPA is **granted**.

Counsel has authorized payment via credit card of the \$130.00 petition fee upon filing of the petition under 37 C.F.R. §1.182, and those funds will be used instead to satisfy the fee for the petition under 37 C.F.R. §1.53(e).

Application No. 10/042,687 is being forwarded to the Office of Initial Patent Examination for further processing as an application filed under 37 C.F.R. §1.53(b), not under 37 C.F.R. 1.53(d), with a filing date of 21 August, 2001, using the application papers supplied on 22 February, 2002.

Telephone inquiries concerning this decision may be directed to the undersigned at (703)305-9199.



John J. Gillon, Jr.
Senior Attorney
Office of Petitions

Encl.: Copies of the Notice of Allowance of 21 May, 2001, as to Application No. 09/383,908 and the allowed claims 3-21

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